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SPEECH

OF

DAVID MILLS, M.P.,

ON

JESUITS' ESTATES ACT

DELIVERED IN THE

HOUSE OF COMMONS,

OTTAWA,

ON THURSDAY, MARCH 28TH, 1889.

Mr. MILLS (Bothwell). I have watched with attention the proceedings in this debate, not with more attention to what has been said by hon. gentlemen who have taken part in the debate than to the manner in which it has so far been conducted. Since I have had a seat in Parliament, I do not remember any subject which has come before the House that has exhibited the tactical skill of the hon. the First Minister to greater advantage than this discussion. The hon. gentleman finds himself face to face with what may become a dangerous agitation, involving the Administration of which he is the head. That agitation was begun by a journal conducted with more than ordinary ability, and characterised by what may be called a spirit of aggressive Protestantism; and it has gradually drawn to its side a large portion of the press of this country, and a very great deal of discussion adverse to the conduct of the Government has taken place in public meetings at several places in the Province of Ontario. Well, the hon. gentleman, in order to meet the dangers of the position, seems to have divided his forces that he may be in a posi-

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tion to control both sides. He has appointed his lieutenants—the hon. the Minister of Justice to lead one section of the hon. gentleman's forces, and the hon. member for North Simcoe (Mr. McCarthy) to lead another section of those forces. So the hon. gentleman has made such arrangements as to bring back to the support of the Government any that might be inclined to go astray. If they are dissatisfied with the conduct of the First Minister, they are at all events not dissatisfied with the position taken by his ardent and faithful supporter, the hon. member for North Simcoe (Mr. McCarthy) Now, the business of each of these two distinguished lieutenants is to look carefully after his own division of the grand Conservative army, and I have no doubt that these two hon. gentlemen have, in the estimation of their friends, discharged the duties assigned to them by their chief with a great deal of ability and a great deal of skill; and I am sure that the hon. gentleman must feel equally grateful to his colleague, the Minister of Justice, and to his supporter, the hon. member for North Simcoe. This is not the only feature of this discussion worthy of notice. There is the hon. member for Muskoka (Mr. O'Brien), who moves this resolution, and makes a very ardent and somewhat unreasonable Protestant speech, and there is another hon. gentleman, who, so far as I know since I have been in Parliament, has never been found voting against the Administration, the hon. member for Lincoln (Mr. Rykert), who is put up to answer the other ardent supporter of the Government, the hon. member for Muskoka. Then, the hon. member for North Simcoe (Mr. McCarthy), speaking after these hon. gentlemen, and after the hon. the Deputy Speaker (Mr. Colby), tells the House that he will not take the trouble to answer the arguments which were addressed to the House by the hon. member for Lincoln (Mr. Rykert). He tells us that that hon. member does not fear his constituents, because he never expects to return to them, that he is soon to go to his reward, that he has in this House no abiding-place, that his labors as a supporter of the Administration, in this House, are drawing to a close, and that every day he is pitching his tent a day's march nearer the place where he expects to be. The hon. gentleman expects, according to the informatien afforded to the House by the hon. member for North Simcoe, soon to be gathered, not to his fathers, but to the fathers, where scrap books will be no longer required, and where all anxiety, as to the future of an election, will be dispensed with. That is the position presented to the House by the hon. member for North Simcoe

(Mr. McCarthy) in regard to the hon. member for Lincoln. Then the hon. member for North Simicoe told us of the position of another supporter of the Government, the Deputy Speaker of this House (Mr. Colby). He told us that the roseate speech of the Deputy Speaker, in regard to the perfect harmony existing between the two sections of the population in the Province of Quebec, was due to thankfulness either for favors received or for those which were to come. The hon. member said the Deputy Speaker was expectant of future promotion, but the hon gentleman did not wish to hear from a Minister *in futuro*, but from one who was actually in possession of the Treasury benches.

Sir JOHN A. MACDONALD. He did hear it.

Mr. MILLS (Bothwell). In fact, the hon. member for North Simcoe (Mr. McCarthy) gives a representation of the Deputy Speaker which reminds me of a statement in Lord Beaconfield's "Endymion." In describing one of the characters in that book, the author says he had a feeling in his bosom which he was not very sure whether it was gratitude or indigestion; and so the hon. member for North Simcoe says that the able speech made by the Deputy Speaker was the outcome of some motive, either of favor already received or of favor to be received from the Government, but he was not very sure which. Now, the hon. member for North Simcoe, while he described the motives which actuated those with whom he is associated on that side, and the feeling which induced them to speak in support of the position of the Government, failed to give us any information as to the motives by which he was actuated himself. I do not say that the hon. gentleman was looking forward to a seat upon the Treasury benches. I do not know that such a position would have any attractions for him. It is quite possible that it might not have; but I remember very well the support which that hon. gentleman has given the Government in past Sessions. I remember that Railway Commission Bill which was introduced and supported by one who stood so near the Prime Minister, year by year, by which the Grand Trunk was paralysed and the interests of the Canadian Pacific Railway were promoted, and I cannot bring myself to believe that the hon. gentleman would have taken the position he has in support of the amendment of the hon. member for Muskoka (Mr. O'Brien) if he thought the Government had any serious objection to the amendment. The hon. gentleman not only failed to give us any information with regard to

his own motives of action, but he failed to make any allusion to the speech of an hon. gentleman who supported the amendment—the hon. member for West York (Mr. Wallace). Now, that hon. gentleman has been in this House a very ardent supporter of the Administration. How is it that the hon. gentleman on this question arrays himself, along with the hon. member for Muskoka (Mr. O'Brien) and the hon. member for North Simcoe (Mr. McCarthy), in opposition to the course that the Government has seen proper to pursue upon this Bill? Sir, rumor has gone abroad that the hon. gentleman is not without aspirations for a seat upon the Treasury benches; rumor has gone abroad that a round robin has been sent along the back benches, on that side of the House, in the hon. gentleman's interests, asking the Government to find a place for him upon the Treasury benches. It is said that the scarlet robe of the Minister of Customs has become somewhat faded by his long sitting upon the Treasury benches, and that he is no longer a fitting representative of a very large section of the Protestant population of the Province of Ontario; and so it is proposed—at all events, such is the rumor—to recuperate that section of the Government by adding the hon. member for West York (Mr. Wallace). Well, Sir, the hon. member for West York is opposing the Administration of which so many of his friends desire that he should become a member. The hon. member shakes his head. I have no doubt that he is sincere in that shake. I do not think the hon. gentleman feels that he is opposing the Administration; I do not think he feels that by giving the vote he intends to give in support of the motion of the hon. member for Muskoka, he is doing any detriment to the Government of which he wishes to become an important member. The hon. gentleman, no doubt, feels that, as it is said all roads lead to Rome, so all lines of action upon this motion, on that side of the House, will lead towards the Treasury benches, because they are alike intended to protect and strengthen the right hon. gentleman and those associated with him in the Government of this country. I think the hon. member for West York is quite right, and perhaps quite consistent, in his support of the Administration by supporting the motion of the hon. member for Muskoka rather than the motion of the Minister of Finance. We have had the two sides of the Government presented on this question. The hon. member for North Simcoe talked of the two sides of the shield, and I never saw an instance in which there were two sides to a political shield more manifest, and, I may say,

more admirably presented, than they have been on this occasion. Although we may admire the hon. Minister of Justice for the very able speech he made on one side, and the hon. member for North Simcoe, for the very ardent speech he made on the other, I think we must after all give credit to the skill and generalship of the Von Moltke who leads the Government, and who leads this House. This, Mr. Speaker, is a sort of introduction to the new plan of campaign——

Sir JOHN A. MACDONALD. The preamble is not part of the Bill.

Mr. MILLS—which the Government have presented. The introduction is not without interest. Of course when, in a novel play, the actor is introduced to the audience, it is always interesting to those who understand it, and who are looking on, and who are anxious to see how it will end. Sir, the Minister of Justice last night made a very exhaustive speech in defence of the action of the Government, a speech in almost every word of which I cordially concur. When the hon. gentleman had completed that speech the hon. Premier was ready for a division. He did not see any necessity for any further discussion upon the subject. It had been fully and exhaustively discussed. Both sides of the Government shield had been presented to the House. The Government had made their defence before the country, and they say to the electors: You can follow the Minister of Justice and support the Government, or you can take the other side, and follow the hon. member for North Simcoe, and support the Government; and so which ever way the matter may be arranged, it comes to supporting the Government after all. It is like the trade between the hunter and the Indian. It is: you take the owl and I will take the turkey; or, I will take the turkey and you take the owl. It goes to the Government, no matter what the choice may be. Well, Sir, the Prime Minister was no doubt ready for a division, but we were not, and is it to be wondered at? I expect, at all events, and no doubt the vast majority on this side of the House expect, to support the Government. But when one is in questionable company he always feels obliged to make some defence or explanation of his conduct; and I feel it necessary, in view of the political character of the gentlemen with whom I am to be associated in this vote, to give some account and some justification to the public for the course I intend to pursue. Now, we, on this side of the House, feel that this is a very important question. It is one which is calculated to arouse

religious feeling, and religious prejudice; it is one in respect of which men, if they once become permeated with it, are likely to throw reason to the winds; and, therefore, in this incipient stage—if the incipient stage of the excitement and controversy is not passed—it is important that the Opposition, as well as the members and supporters of the Government, should have an opportunity of assigning to the public what is a sufficient reason for their own justification, and which I think will be regarded as a sufficient reason by the great mass of those who support them, for the course which they intend to adopt on this occasion. We have had most of the speaking so far done on one side. Our business in this discussion, Mr. Speaker, is to stand up for the right, to allay, so far as we can, the popular excitement, to correct the popular misapprehension as to the nature of the question put in issue by this Bill—not to become mere weathercocks which will indicate the strength of the gale which may be blowing from this or that particular direction. I have, and I have no doubt that every gentleman on this side of the House has, too much respect for the good sense and the good intentions of the people to undertake to convert this Jesuits' Estate Bill into a sort of "Ginx's Baby" for the purpose of creating religious excitement and for arousing religious animosities throughout the country. So, for these reasons, we propose fully to discuss this question, and I think the time occupied in such a discussion is not wasted. There is one advantage, amongst the many disadvantages of popular excitement, that under it people are more likely to listen, with attention to what is said, and you have an opportunity of imparting to them information upon a subject which they would not be likely to receive under other circumstances. That being the case, I think we are justified, notwithstanding our anxiety to bring this Session to a close, in taking whatever time may be necessary, to enter fully into the discussion of this subject, and to give to the people who sent us here all the information necessary to enable them to form an intelligent conclusion on the merits of the question in issue. Sir, this is a most important question. The motion that has been placed in your hands by the hon. member for Muskoka (Mr. O'Brien) is, in some respects, one of the most important that has ever been brought before Parliament. We have in this motion, in the name of toleration, a demand for intolerance, and we have, under the pretext of resisting encroachments upon constituted authority and the maintaining of the supremacy of the Crown, a motion asking for a violation of the Constitution. This motion is, in my opinion, laden with mischief,

because it mingles religious prejudices and religious animosities with the consideration of the question. It mingles up stories of wrongs done and wrongs endured, as narrated in history, with fables and romances. I did not know when I heard the speech, especially the latter portion of the speech of the hon. member for North Simcoe (Mr. McCarthy) and the speech of the hon. member for Muskoka (Mr. O'Brien), whether they had derived their information from history or romance. I thought that the hon. gentleman who moved the amendment had studied the "Wandering Jew" more carefully than anything else, and that in all probability the political portion of his speech was derived from "Henry Esmond." In a country where you have 2,000,00 of Roman Catholics, and something less than 3,000,000 of Protestants, it is in the last degree mischievous to invade the political arena with religious discussions, and to endeavor to convert Parliament itself into an ecclesiastical council for the purpose of deciding what religious opinions ought to be encouraged, and what religious opinions ought to be suppressed. We must continue to be one people, or at all events a people of one country, and it is not desirable to make the people of Canada, like the Jews and Samaritans, the two sections of which would have no dealing with each other. There may be questions involving principles so vital to human progress, that the evils arising from undertaking to evade the question, the evils arising from acquiesence, would be greater than those which would flow from converting the country into two hostile camps; but it seems to me, Mr. Speaker, that this is not one of those occasions. In this case no such disagreeable choice is forced upon us. We have in this motion simply the question of the right of local self-government on the one side, and the assertion of a meddlesome interference and oversight on the other. We have in this motion, a proposition to set aside the judgment of a Province upon a question within its own jurisdiction, and to replace that judgment with that of a majority of the people, or a section of the people, in another Province. I do not think we can permit any such course to be adopted. If we were to do so, it would be practically an end to the system of federal government. The hon. member for Muskoka and the hon. member for North Simcoe have quoted history upon this question. But the history or controversial papers written by men of strong polemical tendencies, the more they are studied the more the readers are likely to be led astray, and especially is history misleading when it relates to a remote period and when the surrounding circumstances and the environing in-

fluences of our own day are altogether different from that of the age about which they were writing. The past never repeats itself. The hon. gentleman assumes that it does; his speech was based on that assumption. I say the present is always being taken up into the past in the form of permanent results, and the future will differ from the present by all the influences that are to be found in the events of the age immediately preceding. Were it not so you might take a thousand years out of the history of a people, without any change in its subsequent history. The thousand years before and a thousand years afterwards would fit together, for the intervening period would be of no account. That is not the course of historical events, and when an hon. gentleman undertakes to tell us what this and that party believed or did 100 years or 500 years ago, without taking into consideration the circumstances under which those doctrines were laid down, or those principles enunciated or undertaken to be applied, he is giving information which is calculated to mislead rather than to enlighten the people of the present day. I have no doubt that this question also is dangerous to public tranquility, from the consideration that it is a religious question. Men always feel they can go a long way when they think they are supporting their religious dogmas, or the religious dogmas of somebody else, and they will employ in the defence and in the promotion of those views, and those religious opinions and preferences, means which they would altogether set aside in the affairs of civil life. In order to consider with profit some of the legal and constitutional features of this question, and some of the legislation to which the hon. member for North Simcoe (Mr. McCarthy) has referred, we have to take into account the limits of government in former periods. We must remember we have largely circumscribed the field of government. There was an age when the Government undertook to control the whole domain of human action, when private domestic relations, the religious and political affairs, were all brought under the control of Government, and when the affairs of life, whether private or public, were regulated by the united authority of Church and State. Sir, in order to fully understand the legislation to which the hon. member for Muskoka (Mr. O'Brien) referred, we must remember that in the rise of the Teutonic kingdoms on the ruins of the Roman Empire, provincial churches were superseded by national churches, ecclesiastical persons were included in the government, and while men came there with spears and shields, there came also bishops and leading men of the church, and they sat in council together, and legislated toge-

ther, and dealt with ecclesiastical and religious, as well as with civil matters; and so the legislation in a large degree covered everything relating to questions of religion and conscience, as well as to political affairs. Under the circumstances it was as much an act of wrong-doing and as much a violation of the law of the land to dissent from the rites and the polity, the doctrine and the discipline, established by the laws relating to the church, as it was to disregard matters of civil authority. And so every case of dissent was regarded as a case of sedition. Men and churches, whether they were Protestants or whether they were Roman Catholics, under those circumstances, were intolerant. It was a necessary condition of the state of society then; they could not well be otherwise. If a man sought to set up a separate church establishment, it was as much against the law as if he had undertaken to set up a separate political tribunal, or a separate judicial institution; and so, as I have said already, the domain of government was extended over almost the entire field of political and religious opinion and action. This was the condition of things during the Tudor period in England, and it was the condition of things, in a large degree, though not to so great an extent, in the period of the Stuarts. Now, let me call the attention of hon. gentlemen on the opposite side, who have dealt with this Jesuit question to some facts of history—and I am not going to say anything in defence of this order, I am not going to enter upon any such discussion, but I wish to call the attention of the hon. gentlemen to the past, and I would like to ask them, would they be willing that their rights should be governed, and their action controlled and circumscribed, by the intolerant acts of the church or of a religious society of that day, with which they are now connected. Take the reign of Queen Elizabeth, and in her reign there were upwards of 200 Roman Catholics executed for sedition or treason. The charges against them were political charges. I am speaking now of those who were put upon trial, and the records of whose trials exist, and we find that fifteen were executed for denying the Queen's supremacy in ecclesiastical matters, that one hundred and twenty-six of those were executed for undertaking to exercise priestly functions, and that eleven were put to death for the pretended plot of Rheims. Every one of those parties were tried, as Sydney Smith points out, for a political offence; but what was the political offence? There was the established church; the Queen's advisers had stated what the doctrines and discipline of that church ought to be, and those men, by remaining members of another communion, set the law in regard to

that establishment at defiance. But they were not the only ones who acted in this way. We find that the Nonconformists, Joan of Kent, and Peterson, and Turwort and others, were executed on precisely the same principle, for holding opinions different from Elizabeth and her advisers. If hon. gentlemen will refer to some of the histories of that period they find these parties are spoken of as conspiring against the Government, and as parties guilty of treason; both Nonconformists and Roman Catholics. But what was that offence? It was that they declined to accept the rites and discipline of the establishment that had been created by law. Cambden, in his Annals, mentions that, in his day, there were fifty gentlemen imprisoned in the Castle of York, the most of whom died of vermin, famine, hunger, thirst, dirt, damp, fever, whipping, and broken hearts, and that the only offence of those victims was, that they dissented from the religion of the Statute-book, and that of Her Majesty's spiritual advisers. Now, hon. gentleman would not like to have the intolerance of that age quoted as a reason why they should not now be granted the rights of ordinary citizens. They would not like to have the religion of that period, and its enforcement by those who were of the same religious persuasion as they are, quoted, as an evidence of their intolerance. It was the necessary outcome of the age in which those people lived, for when you undertake to extend the authority of government over the religious and ecclesiastical, as well as over the civil affairs of life, when you insist upon conformity to the one, as well as the other, it was a necessary consequence, that those who dissented in their views from the establishment, should be in a very uncomfortable position. Now, one of those who was executed at that period for opposition, was the Jesuit Campion, and he, at his trial, said, that his only offence against the Government was that he had been guilty of holding a faith different from that held by the State. We would, no doubt, be ignoring history altogether if we did not see that many members of the Jesuit Order took an active part in the restoration of the Stuarts, and why was that? Because the Stuarts favored their religion, and the Stuarts would establish it. The universal opinion was that some religion or other must be established, and they did what was perfectly natural for anybody to do—they sought to establish their own religion. When James II became an avowed Roman Catholic, and when he was using his sovereign position for the purpose of the restoration of the Roman Catholic faith and for overturning that of the great majority of the nation, there were Protestants who were

then as active as ever the Jesuits were in endeavoring to bring in King William and in effecting a change of government, giving to the country a parliamentary sovereignty instead of one based on the notion of Divine Right. So you find the Jesuits were in treaty again on the death of Queen Anne, or in the closing years of her life, to bring back the Pretender, because the dynasty was at an end, a new family was to be established on the throne, and the question was as to whether it was to be the Pretender or some member of the House of Hanover. If you take the history of the Stuart period in Scotland, and if you consider the relations of Mary, Queen of Scots with Knox, or of James VI with Knox, you will see that that great Reformer's opinion of duty of the sovereign and of the connection between the Church and State are wholly different to anything what we entertain to-day. No Presbyterian to-day would care to have his political views measured by the political standard of John Knox. He knows that the world has been changed since that date. He knows that society has undergone great changes, and that what was regarded as right and proper at that period would be a wholly improper thing to-day. Toleration is of later growth; toleration grew as the state authority was contracted. There is no place where we hear so little with regard to religious interference in the affairs of state as in the republic beside us. Why is that? It is because the Government is extremely limited, and because every subject of that sort is excluded from the domain of political authority. So, to-day, we have a far greater amount of religious toleration, we have a more tolerant spirit abroad amongst every religious community, than existed in the former period, simply because we more fully appreciate the importance of confining the sphere of Government operation within narrower limits than did our forefathers. Now let us look at some of the political views of that question. I regard it as extremely dangerous to our constitutional system. The hon. gentleman has put forward, as the first branch of this amendment, a proposition which I do not see how any hon. gentleman who favors a Federal Government can uphold. He says that this House regards the power of disallowing the Acts of the Legislative Assemblies of the Provinces, vested in His Excellency in Council, as a prerogative essential to the national existence of the Dominion. Why, Sir, the United States has a national existence; it has lived for the past 113 years, and the President has no power of disallowing a State law, or in any way interfering with the authority of a State Legisla-

ture. Every measure is left to its operation. If it is *ultra vires*, the courts, and the courts only, can say so. But the hon. gentleman asks this House to declare that the whole machine of Government in Canada would go to pieces unless the Government exercised this veto. But, Sir, there is no doubt whatever that it would be a gross abuse of the trust committed to them by our Constitution if they were to exercise it on the present occasion. Our constitutional system is similar in principle to that of the United Kingdom. What is the meaning of that? The United Kingdom has no federal organisation. Why, Sir, these words refer to the relation between the Executive and the Legislature. Our Constitution is similar in principle to that of the United Kingdom, in giving us responsible government; it gives us a Cabinet controlled by a majority of the House; and it gives us a House subject to an appeal to the country at any moment that the Crown thinks necessary. There is a certain sphere of exclusive action assigned to the Local Legislatures, and a certain sphere assigned to this Parliament. Let us suppose that a Local Legislature, within its own sphere, had certain important questions coming before it; suppose this question were one; suppose Mr. Mercier had said the Jesuits have a moral claim upon the Jesuits' estates, and that he had been beaten in the Local Legislature; that he had gone to the country on the question, and that a majority had been returned with him to the Legislature to carry out that particular measure; how long would your system of parliamentary government endure, if the Government here should, after that measure was carried, take sides with the minority and disallow it? Sir, the Local Government have a right to go to the country upon a public question, if the country is the proper tribunal to decide whether they are right or wrong, it is perfectly clear that it cannot be the constitutional rule that this House is the proper tribunal to decide. How long could parliamentary government endure if the Administration here were to exercise that species of supervision over the Legislatures upon whom responsible government has been conferred. If we should act the part of ancient Downing street, and undertake to decide what is wise or unwise, why, Sir, your Government would be at an end. If you have local self-government conferred upon the people of the different Provinces, it is clear that the electors of those Provinces, within their constitutional authority, are the ultimate court of appeal for the purpose of deciding whether the political course of their Govern-

ment is what it should be. They are the proper parties, and they alone. It is not to the hon. gentlemen on the Treasury benches, but it is to the electors that the Local Legislatures are responsible for their acts within constitutional limits; and while they keep themselves within those constitutional limits, I hold that we have not, according to the spirit of our Constitution, a whit more right to interfere—to use this prerogative for the purpose of disallowing their acts—than we would have to interfere with the acts of the Legislature of the State of New York. They are a distinct political entity for all the purposes for which exclusive power is given to them; they are constitutionally beyond the control of this Government and this Parliament; if they have acted wisely, their own electors will sustain them; if, in the judgment of the electors, they have acted unwisely, they will condemn them, and will send to Parliament representatives who will repeal the law. By the judgment of their own masters they must stand or fall. But, Sir, it was hinted by the hon. member for North Simcoe, that these people were not fit to be trusted fully, and therefore, this meddlesome oversight is necessary. If you take that position your whole system of government is at an end. That system is based on the theory that the people of each Province are fit to be trusted, that they are competent, and that if the Government do wrong, the people will set them right. I see statements in the press and elsewhere, that this Government ought to exercise this power of disallowance. Have we a beneficent power given to the Government here, by which they may act absolutely and upon the theory that they never err, that the Local Legislatures are not to be trusted, and that this power is to be frequently exercised, in order to keep them right? What would we say in this House, if the Imperial Government were to interfere on any question wholly within the purview of our authority? Would we submit to that interference? You would have the whole country aroused; you would have it declared, that we would not submit to the meddlesome interference of Downing street; you would have the old question about parliamentary government revived again. I say, that what would be improper to be done by the Imperial Parliament against us would be improper to be done by us against the Local Legislatures. Now, we never can proceed upon the assumption that this Parliament is wiser, in matters within the purview of the Local Legislatures, than the Local Legislature or the Local Government are. The assumption in our Constitution is that authority is vested in those who

are most competent to exercise it. Certain general matters are entrusted to us, because it was believed—in the public interest—that we could do better for the whole community than each section of the community could do for itself. It is upon that ground that the Union is established; but it is also assumed, in the reservation of certain powers to the Local Legislatures, that they are the most competent to discharge the duties connected with those powers. If they are the most competent, upon what ground can we interfere? What right would we have to interfere? Why, the very ground on which interference is asked in this case would, if it had been put forward when the Constitution was framed, have been sufficient to have kept the Province of Quebec out of the Union. Are you going to entrap them into a union by a form of constitution which seemingly gives them exclusive control over certain subjects, and then, after they have become members of the union, exercise a meddlesome oversight over their domestic affairs? That is what is proposed. I say that is an improper thing, and I repeat that you never can safely undertake, even where a Local Legislature goes wrong, to correct their errors, instead of leaving the correction of those mistakes to the electors where it constitutionally belongs. Now let me call your attention to a precedent or two on this subject. When this question was raised in connection with the New Brunswick School Bill, Lord Carnarvon said:

"That the Constitution of Canada does not contemplate any interference with provincial legislation, on a subject within the competence of the Local Legislature, by the Dominion Parliament, or, as a consequence, by the Dominion Government."

There is the limit Lord Carnarvon sets for that authority to disallow. He asks: Is the question one competent for the Local Legislature to deal with? If it is, your jurisdiction is excluded, your right to interfere is excluded. The Act may be unwise, but that is for them to judge, and not for you. You are not made a sort of second body to represent the people of a particular Province in provincial matters. In that same case, the law officers of the Crown, Sir J. D. Coleridge, the present Lord Chief Justice, and Sir George Jessell, afterwards the Master of the Rolls, one of the most distinguished judges of this century, said:

"Of course it is quite possible that the new statute of the Province may work in practice unfavorably to this or that denomination, and therefore, to the Roman Catholics, but we did not think that such a state of things is enough to bring into operation or restrict the power of appeal to the Governor General."

Now, here was an Act which, he said, might work unfairly and injure a particular class of the people who were

complaining, but with which, as it was within the exclusive jurisdiction of the Province, although injustice might be worked, it was not the business of the federal authority to interfere. That is the doctrine clearly laid down in this case. In 1875, when the then hon. member for Terrebonne (Mr. Masson) brought this matter before the House, we refused to comply with his wishes, we refused to seek to set aside the provincial legislation upon the subject; and when Bishop McIntyre, of Prince Edward Island, asked the Government of my hon. friend from East York (Mr. Mackenzie) to disallow the School Bill of that Province, which, he complained, was unfair to his people, we refused to interfere because we believed the matter to be wholly within the jurisdiction of the Legislature and Government of Prince Edward Island. What we then declined to do for the Roman Catholics we now decline to do against them. We are acting consistently; we are seeking to uphold on this, as on that occasion, the principle of provincial rights. The First Minister, in discussing the report on the School Bill of New Brunswick, laid down this proposition, that there were only two cases, in his opinion, in which the Government of the Dominion was justified in advising the disallowance of a local Act. The first was that the Act was unconstitutional and *ultra vires*, and the second, that it was injurious to the interests of the whole Dominion. Now, there is no doubt whatever about the soundness of the hon. gentleman's first proposition, and there is no doubt about the soundness of the second proposition, if there is no possibility of disputing the facts. The Government of the Dominion could not act, and they would have been guilty of a violent breach of the constitution if, because they held a different opinion from the Local Legislature, they should set up their judgment against the solemn decision of the Province in a matter entirely within the control of that Province. That was the position of the hon. gentleman on that important question, and with that position we never quarrelled; to the principle laid down on that occasion we unreservedly subscribed, and to that we have ever since adhered. Let us look for a moment at the federal principle. If the Government were completely federal, there would be no power of disallowance, and I have always been of opinion that the power to disallow was an unfortunate provision of our Constitution. I have always been of opinion that it would have been, on the whole, very much better to have left the question, as in the neighboring republic, entirely to the courts, rather than take the risk of the pressure which may be brought on an Administration, from time to

time, to interfere in a way detrimental to the rights of the Provinces. The first question to be asked is: Is the Act in controversy within the exclusive jurisdiction of the Province? If it is, upon what grounds can its disallowance be called for? Where the Minister of Justice thinks an Act is *ultra vires*, and that serious wrong might be done by allowing it to come into operation, he may make it a subject of correspondence with the law officer of the Province, and if, after full discussion with that law officer, he is still of opinion that the Act is *ultra vires*, he may disallow the Act, instead of leaving it go into operation until pronounced void by the courts. Now, what the hon. gentleman who has made this motion proposes is to convert Parliament into a Court of Appeal. He proposes to make this House a court for the purposes of deciding the limits of local and federal jurisdiction. Well, this Parliament may have a question of that sort, when it undertakes itself to legislate, forced upon it, and it must, for its own purpose, decide whether the question is *ultra vires* or *intra vires*. The House, it seems to me, is a body ill suited to exercise judicial functions, and to undertake to say, in any question or proposition of this sort, what is the exclusive jurisdiction of the Province, and the exclusive jurisdiction of the Dominion. Now, when we look at the Constitution, we find that everything relating to property and civil rights is under the control of the Local Legislature, except in so far as the control of property and civil rights is specifically given to the Dominion in the provisions of section 91. I am inclined to think that we often forget how comprehensive those words are: "property and civil rights." Civil rights, barbarians of course have none. The civil right is a right regulated by the State. It is the exercise of a right, that belongs to the individual, in a way consistent with the rights and liberties of another individual. It may embrace religious as well as political creeds. The relations between parent and child, between guardian and ward, between master and servant, are all civil rights. The relations between the Churches and the State are civil rights. It is possible for a Local Legislature to say this religious body may be endowed by the State, and another shall not be endowed. There is nothing in the Constitution to prevent a Local Legislature endowing a church, if it sees proper to do so. In the exercise of those powers over property and civil rights, it may do so. It may regulate the observance of the Sabbath and the observance of holidays. It may make our school system secular or denominational, in so far as it is not prevented by a specific provision of the Constitution.

It may make the school system wholly religious. The Province of Ontario, to-morrow, might make a provision doing away with public schools and adopting a system of denominational schools in its stead. I do not know any ground upon which we could interfere on the subject of the relations between Church and State in a Province, except it would be in saying that a person belonging to one denomination may have the elective franchise and another not. The hon. gentleman told us yesterday that the connection between Church and State was entirely abolished by the Act of 1854. The hon. gentleman sought to leave the impression on the House that that Act was a finality, that the Provinces were restrained in some way by that Act. Why, the Province of old Canada, which passed that Act, might the next year have repealed it, and have established the old Church of Scotland as the Established Church of Canada, or the Church of England, or the Methodists, or some other body. Of course, in my opinion, as an opponent of the connection of Church and State, it would be unfortunate to do any one of these things, but the power is not taken away simply because it would be unwise, or inexpedient to use it. Now, the Local Legislature in any Province may very widely depart from the order of things which existed at Confederation. Everyone who knows the history of this Union knows right well that, at the period of Confederation, there was a disposition on the part of Ontario to take one view of public policy, and on the part of Quebec to take another view. There were a number of questions upon which there was friction; and what was one of the objects of the dissolution of the old Legislative Union, and the establishment of the Federal Union in its place? It was to get rid of those difficulties, by allowing each Province to take its own course. Whether that was wise or unwise, whether it was the best in the interests of civilisation, or whether it would lead to a different result, each Legislature was free to decide for itself, within the limits fixed by the Constitution, what course it would adopt. The hon. member for North Simcoe (Mr. McCarthy) yesterday concluded his speech by a quotation from a speech of Prof. Caven. I have not the pleasure of knowing Prof. Caven personally, but everything I have heard in regard to him has led me to the conclusion that he is one of the ablest thinkers in the Dominion, and that he is not a gentleman likely to form an erroneous conclusion when all facts are properly before him; but he lays down in that speech three propositions. One was that the appropria-

tion of these funds in the Province of Quebec was a malversation of public funds. Now, that is not so. That is a total misapprehension of the state of the question. Quebec may have acted very unwisely in dealing with the funds as she did, but the Legislature of Quebec was as free to deal with the funds under the control of that Province as this Legislature is, or as a private party is to deal with the moneys and property belonging to him. Whether Quebec has used the moneys wisely or unwisely it is not necessary here to discuss. The fact is that the money was her own to do as she pleased with. It was under her sovereign control—for, for this purpose, she is sovereign—and it was no more a misappropriation of her money than it would be if we were to take moneys which we have been in the habit of devoting to one purpose, and were to withdraw them from that purpose, and to use them for some other and different purpose. We have had discussed here those three questions: To whom did this property belong? how was it acquired? how was the ownership lost? In part it is said to have been granted by the King of France, in part it consisted of private benefactions, and in part it was property purchased by the society with its own money. Now, as to the first two classes of property, they were given to the society to propagate the Roman Catholic religion. The society itself was not at an end. It was not for the advantage of the society, as a society, that it was given, but it was given to the society as a means to an end, and that end was the propagation of the Roman Catholic faith, the society forming a part of that church. If the views of that society were in any respect at variance with the views of the church, then the property was not given for the promotion of those views. The hon. member for Simcoe (Mr. McCarthy) said that the church to which he belonged had been despoiled of its estates when the Clergy Reserves were secularised. Why, the Clergy Reserves never belonged to the church. They were reserves, not grants. They belonged to the State. The State held them during its pleasure for a particular purpose, and while that pleasure continued, the State applied the proceeds to that purpose. But there were 57 rectories, and those were grants, and, when the connection between Church and State by the Act of 1854 was declared to be abolished, those 57 rectories were not taken from the church. The church retained those rectories because they were its private property at the time this Act of 1854 was passed. Let me state some of the analogies which, I think, may be fairly used to illus-

trate the position of this Jesuit Society. That society had very much the same relation to the Roman Catholic Church in New France as the trustees of Queen's College have to the Presbyterian Church, or Victoria College to the Methodists, or the trustees of McMaster Hall to the Baptists. Now, if any of these corporations failed, and the Crown took possession of the property which belonged to the extinct corporation, would any one of these denominations be quite satisfied with the result? For instance, if Queen's College was taken possession of by the Crown and its property sold, and the moneys put into the Consolidated Revenues of Ontario, would not the Presbyterian body assert a moral claim, in spite of the legal right which might belong to the Crown in respect of those properties? That is very much the position which the Jesuits and the Roman Catholic Church in Lower Canada took towards the Crown when the Crown appropriated these estates. It is said by the hon. gentleman that these are very improper people, that they have been intriguers, political intriguers, in every country in Europe, and that they are not to be trusted. Well, speaking from the ethical point of view, that reminds me very much of the position of a man who owes another and does not want to pay what he owes, and he says: I will not pay the man I owe because he is a drunken rascal and beats his wife, and, if I paid him the money, he would get drunk and would beat her again, and, as I am a moral man, I prefer to keep the money. The hon. member for North Simcoe (Mr. McCarthy) yesterday went on to state the origin of the title of the Crown to this property. I do not attach any importance to this, for the reason that the legal title of the Crown is not disputed by the Prime Minister of Quebec, although, historically, it is an interesting question as to how the Crown came into possession of these estates. The hon. gentleman, yesterday, stated four theories, three of which must be erroneous, as to the way in which the Crown acquired possession. He cites two of these from two separate reports of the Judge Advocate General, Marriott. The one was that the property had been confiscated by the King of France before the conquest, and was part of the public domain belonging to the King of France at the time of the conquest. The law officers of the Crown, the Attorney and Solicitor Generals, did not concur in that opinion, and did not act upon it. Then Mr. Marriott gave another opinion that these estates belonged to the General of the Order, and that as proprietor there was no provision made for his selling or disposing of them, that the only parties who had a right to hold estates in Canada were those who were British subjects,

that the General of the Order was not a British subject, that no provision was made for selling except by those who wished to leave the country, and as the General of the Order had never been in the country, he could not sell, and so the property necessarily belonged to the Crown. This may be ingenious but it is not sound. Then there was also the title set up based on the conquest, and there is the title set up by the extinguishment of the corporation by the Pope's Bull. When we look at the papers we find a proclamation, dated in 1774, in which the Crown declares its intention to take possession of these estates in consequence of the dissolution of the Order, and the proclamation seems to have been repeated again in the Royal Instructions given in 1791. It is said in the Royal Instructions:

"It is our will and pleasure that the Society of Jesus be suppressed and dissolved, and no longer continued as a body corporate or politic, and all their possessions and property shall be vested in us for such purposes as we may hereafter think fit to appoint, and direct and appoint."

That was in 1791, 30 years or more after the conquest. Now, I do not see myself on what legal principle the King could, at that time, or at any time after he had established a government in the country, assert any such title as that to the estates. He did not assert it at the conquest. There was no formal possession claimed or taken. I find at a still later period, the next year, another and different ground is put forward as the ground of the King's title. It is in the fiat issued by the Governor of that day, and he says:

"Whereas all and every of the estates and property, movable or immovable, situated in Canada, which did heretofore belong to the late Order of Jesuits, have, since the year of our Lord 1760, been and are now by law vested in us."

So we find in that fiat the title is dated back to 1760, although in the Royal Instructions it is dated in 1791. But there is no doubt that the Crown went into possession some way or other, and if the title was not a legal title, it in the first instance because a title by prescription against the order. I don't see any ground for asserting a title in the Crown, except by prescription. Mr. Mercier does not admit any legal title in the Order of Jesuits, but their moral claim he admits to exist. Now, let me call the attention of hon. gentlemen to certain articles in the capitulation of Montreal. I think it is clear, from these Articles of Capitulation, that the King was precluded from asserting any legal title as conqueror:

"Art. XXXII. The communities of Nuns shall be preserved in their constitution and privileges. They shall be exempted from lodging any military, and it shall be forbidden to trouble them in their religious exercises, or to enter their monasteries; safeguard shall even be given them if they desire them

"Answer—Granted

"Art. XXXIII. The preceding article shall likewise be executed with regard to the communities of Jesuits and Recollets, and to the house of the priests of St. Sulpice at Montreal. This last, and the Jesuits, shall preserve their rights to nominate to certain curacies and missions as heretofore.

"Answer—Refused till the King's pleasure be known.

"Art XXXIV. All the communities, and all the priests shall preserve their movables, the property and revenues of the seignories and other estates which they possess in the colony of what nature soever they be, and the same estates shall be preserved in their privileges, rights, honors and exemptions.

"Answer—Granted."

Now, I ask the attention of hon. gentlemen to this, that all the communities spoken of are the Nuns, the Jesuits, the Recollets, and the priests of St. Sulpice. These are the four orders, and it is said in this article that all the communities and all the priests shall preserve their movable properties and revenues, seignories, &c., on this ground. Then this construction of this article is further confirmed by article 35:

"Art. XXXV. If the canons, priests, missionaries, the priests of the Seminary of the Foreign Mission, and of St. Sulpice, as well as the Jesuits and the Recollets, choose to go to France, passage shall be granted them in His Britannic Majesty's ships, and they shall all have leave to sell, in whole or in part, the estates and the movables which they possess in the colonies."

Now, there were two things allowed to these orders: To remain in the country and to remain in possession of the property under the 34th article, or to leave the country and sell the property before they left under article 35. If the property had been confiscated to the Crown, or had been taken possession of by the Crown, by the virtue of the Conquest, no such article as this would have been granted. But in both these cases there is a provision in the Articles of Capitulation preserving to these parties their rights, which made it impossible for the Crown to acquire a legal title to their estates any more than to the estates of any other portion of the community of the Province of Quebec. It is true the Crown did come into possession. That was largely due to the undue influence of General Amherst, who desired to get possession of these estates as a personal endowment for his services during the war. Now, it may be the Crown acquired a legal title to these estates by holding them, and if it did so, and the right of the Jesuit to assert their title was gone, then there remains only, as

Mr. Mercier has spoken, a moral right to any interest in the property. I think that is a very proper question to consider in the Legislature of Quebec, it is not a question, it seems to me, with which we are called upon to deal, and I would not have referred to it if the hon. member for North Simcoe had not denied altogether any moral right in the matter, and treated this as an act of spoliation which justified our interference. Sir, if it were an act of spoliation, still I do not think that we have anything to do with it. From my point of view, from my interpretation of constitutional rights, from my notion of the use of this prerogative, it does seem to me that if it were a Protestant community, if it were an English Church, or a Presbyterian, or a Methodist, or a Baptist Church, that was in exactly the same position, I do not think any Protestant member of this House would be disposed to deny that there was a moral right to some compensation for property which had been once owned and which had thus been taken away. The hon. gentleman has also pointed out that, we, he says, declared in favor of the absolute separation of Church and State. And if you pay a church anything, no matter if it is only a claim rightfully due, you have connection between Church and State. If the hon. gentleman will look at the Act of 1854, he will see that if that rule were admitted, the very Act which declares that it is desirable to disestablish or put an end to the connection between Church and State does the very thing he says should not be done. There was provision made for existing life interests of parties in the fund, and the present First Minister was the member of the Government who introduced that Bill and carried it through the Legislature. There was a proposition at that time that, in order to secure the immediate separation of Church and State so far as that question was concerned, there should be a commutation of the salaries or compensation due to the different parties, and this proposition was submitted; and the right hon. gentleman, so far as I can recollect, in the discussion said this in reply: If you pay those Ministers the amount to which they are entitled, computed upon their probability of life, they might take the money and go to Australia and South Africa, and might cease to perform those duties which entitle them to receive this money, and you pay over the money upon which the church has a moral claim by its claim to their services. You must take some means of securing the performance of those duties in behalf of which the money is voted. That was the position taken by the riget hon. gentleman

and, I think, he entered into a correspondence—he will remember the matter better than I do, as he was the active party in the case—with the bishop of the Church of England, and with the moderator, or somebody else, on behalf of the Presbyterians, and arranged the commutation of those sums due to the clergy, and paid the money over to the church and not to the individuals.

Sir JOHN A. MACDONALD. Yes, that is so.

Mr. MILLS (Bothwell). I think the sum was $400,000 or more.

Sir JOHN A. MACDONALD. More.

Mr. MILLS (Bothwell). Very much more, I think. And that very Act, under which the money was paid and which was declared to be for the purpose of putting an end to the connection between Church and State, upon the theory of the member for North Simcoe, actually established connection between Church and State. Then there is another consideration. So far as I remember the provisions of that Act, the right hon. gentleman made its provisions depend upon the successful carrying out of the arrangement by those parties who were interested in the matter. If it was treason for Mr. Mercier, and contrary to the Act of Supremacy, to enter into discussions with any outside persons as to the settlement of the disputes in regard to the Jesuit matter, was it not equally improper to enter into a commution arrangement with a party who was not a member of Parliament, who had not a seat in Parliament, and was not in any sense a representative? The right hon. gentleman entered into correspondence with the bishop and with other parties, and it was for the purpose of deciding—what? It was for the puprose of deciding whether commutation should be had with the church or not. The Legislature confirmed in advance what was done. Now, so far as this case is concerned, my point is this: No one pretends that the bishop or any other church dignitary was made a party to the enactment because he was a party to the terms of settlement. No more is the Pope a party in this Bill, but a party to a contract, which this Act subsequently brought forward was intended to carry out. Let me take another case. Supposing, in the case of the Canadian Pacific Railway, the Government had entered into a contract with Sir George Stephen, Sir Donald Smith, Mr. McIntyre, and Mr. Kennedy of New York, and certain parties in Paris. The right hon. gentleman might have set out the correspondence in the Bill, and then we would have a

Bill in exactly similar terms to the provincial Act respecting the Jesuits' estates, and the right hon. gentleman would have had in that contract and Act the names of parties who were non-residents of this country. He might have had it in the name of some party at Frankfort.

Sir JOHN A. MACDONALD. Mr. Reinhardt.

Mr. MILLS (Bothwell). Yes, and the parties in Paris. The right hon. gentleman might have had all those names in the Act, and according to the view of the hon. member for Muskoka (Mr. O'Brien), if it had not been a violation of the Act of Supremacy to have dealt with foreign parties who might be regarded as capitalists, the right hon. gentleman might have been open to the suspicion of legislating for Canada not simply by the Queen and the two Houses, but by the aid of German, French and New York bankers. It is said by a writer in the *Law Journal* that this Act is *ultra vires*. The writer says:

"It is *ultra vires* the constitutional power of a Colonial Legislature to confer on or delegate to any foreign Sovereign, Potentate or Tribunal lawful jurisdiction or authority to determine or ratify the distribution of the moneys or properties of the Crown, or how money grants to the subjects of the Crown within its Colonial jurisdiction are to be distributed."

This, I have no doubt, is intended as a legal proposition, embracing this particular case or Act before us. Let me say that it is wholly beside it. There is here no foreign potentate; there is a foreign party interested. The foreign party is claiming a property, and that foreign party negotiated with Mr. Mercier prior to legislative action. Those negotiations were simply a contract with the Crown, prior to any legislation, and prior to the meeting of the Legislature. He did just what the bankers in Paris did in regard to the Canadian Pacific Railway, with this difference, that the Pope, as the head of the church, acting not personally, claimed the right, the moral right at all events, to this property. Mr. Mercier said: You have no legal right; I can only recognise a moral right. So there was no question of sovereign right, and there was in no way a violation of the Queen's supremacy by Mr. Mercier, who entered into negotiations and dealt with the Pope in the same way as he would deal with any other party having a claim against the Government, whether foreign or native, and Mr. Mercier, after an agreement was arrived at, went to the Legislature and sought to give effect to it. The Legislature, with its sovereign authority over the question, confirmed the agreement which thus had been entered into. Let me call the attention of the House to an opinion given

by Lord Selborne on this point. In the case of Brown *vs.* Curé, &c., de Montreal, 6, Privy Council Appeals, 173, counsel said appeals to the Pope were in contravention of 1 Elizabeth. Lord Selborne observed:

"That statute is not understood to make it an offence at law for Roman Catholics, in this country or in Ireland, to carry appeals to the Pope. The Pope is a sort of arbitrator, taking a legal view of their position, whom they may consult upon the question."

That is the position, and the Roman Catholics in Canada do not violate the Supremacy Act in appealing to the Pope for the purpose of settling any ecclesiastical or spiritual question in which they are interested. I will place the dictum of Lord Selborne against the authority of the Toronto *Law Journal*, and I think those hon. gentlemen who were converted to that side by the powerful argument of the Toronto *Law Journal*, may be converted back again by the still higher authority of Lord Selborne. The *Law Journal* says:

"But the statutes of Elizabeth, the express words, abolish the usurped jurisdiction of the Bishop of Rome, heretofore unlawfully claimed and usurped within the realm and other the dominions to the Queen belonging."

I ask the indulgence of the House for a moment, while I call its attention to the position of this question. It is necessary to look to some extent to the history of the question in order thoroughly to understand the pretensions of the Pope, and his relation to the church in questions of this sort. I will refer to the views that are expressed by Lord Selborne in his book on the English Establishment. He says it was the practice in various times, in order to maintain the ancient privileges of the church, not to permit of appeals to Rome, that it is shown by the constitution of Clarendon, and by earlier provisions of the law, that this was then the practice; but that when Stephen came to the Throne, and his brother, who was the Pope's Legate, was also the Bishop of Winchester, he introduced another practice and they permitted, and in fact authorised, appeals to Rome, which were at fitful intervals continued down to the time of Henry VIII. The statutes that are found in the period of Henry VIII (and which were repealed under Mary), which put an end to the appeals to Rome, were re-enacted by this statute of Elizabeth. Let me call your attention just for a moment to indicate in a brief summary the provisions of these Acts. Henry the Eighth legislated in favor of ecclesiastical emancipation in this particular. Before his day, and up to the middle of his reign, appeals were taken to the Pope in

testamentary acts, and on the questions of matrimony, divorce, tithes and oblations, and by the statute of the 24th year of Henry VIII, chap. 12, those appeals were abolished, and it was declared that hereafter they were all to be adjudicated by the King's temporal and spiritual courts. It will be seen that in every one of these cases there was involved some material interest. They were not purely spiritual cases, they grew up because the ecclesiastical law was applied to parties who made their wills, and so on, at the period of their deaths; and as the ecclesiastical law was not understood by the English lawyers, appeals were frequently taken on civil cases from England to Rome. By an Act of the 25th year of Henry VIII, cap. 19, it provided for the settlement of all those cases by the King's Majesty. It forbade the clergy, under penalty of fine and imprisonment, to make a constitution without the King's assent, and it forbade appeals to Rome other than those that were permitted by cap. 12 of an Act passed in the 24th year of Henry VIII. By an Act passed in the 25th year of his reign, cap. 20, he prevented the payment of annates, and the first fruits that were allowed still to continue after the former statute; that is, that the persons entering into an ecclesiastical office, to which a salary was attached, were obliged to pay the first year's salary to the Pope as a part of his revenue. After that it was declared that the archbishops and bishops were to be elected, presented, and consecrated within the realm of England. In the 25th of Henry VIII, cap. 21, exoneration from exactions by the See of Rome was secured, and they were declared to be independent of all foreign interference. The same statute forbade the payment of Peter's pence, and declared that neither the King, nor his subjects, shall sue to Rome for any dispensation or license. The Archbishop of Canterbury was to grant such in future, but he was never to do so unless he obtained the approval of the King in Council. The 5th and 6th of Edward VI, cap. 1, enacted the principle of uniformity, the use of the Book of Common Prayer, and enforced attendance at church on Sundays. All these statutes were repealed in the reign of Mary, and they were all re-enacted by this Act. The 1st of Elizabeth, cap. 1, declared that "All foreign jurisdiction is abolished, and all spiritual jurisdiction united to the Crown." All these measures amount simply to this, that as the Church was connected with the State, the administration of the affairs of the State, executive and judicial, were declared to belong to the Sovereign. They were vested in the Sovereign, and not one of them was to be invested in any

other tribunal. As long as the power of the Sovereign extended over the religious community, and as long as strict observance of the laws of the establishment were enforced, those Acts of Supremacy, and all those other Acts, were rigidly enforced against the Roman Catholics. But, when it was once admitted, that dissent might be recognised as possible, without treason, sedition, revolution or disloyal intent, variation in divine services, in church polity, and in church rites, were overlooked, and were ultimately tolerated, and they were admitted not to fall within the penal provision of this statute of Elizabeth. It was so held by Lord Selborne, in the case I have mentioned. It is true, that the judgment of the Pope has not, in England, nor in Ireland to-day, so far as the Roman Catholics are concerned the force of a judgment of an ordinary civil tribunal. There are no means, except those which belong to him, as the moral head, to enforce his conclusion; there are no means of enforcing obedience to his judgements, except excommunication or exclusion from the church's privileges, but that he may (as Lord Selborne said) be appealed to, and that he is a moral arbitrator, acting according to certain judicial principles, and that he has the right so to act, and that the Roman Catholics of the United Kingdom have a right so to appeal to him, is beyond all question. We have here submitted to us in this amendment, and in the speeches which have been delivered in its defence, a proposition as to whether the law is in that respect the same in this country, or whether the Roman Catholics of the Province of Quebec are more restricted in their rights than the Roman Catholics in the United Kingdom. Let me say, Mr. Speaker, that the rule which I have quoted from Lord Selborne came into being after the statute of Elizabeth was relaxed, when the dissent from the Establishment was permitted, and when a large portion of the population of the United Kingdom were privileged to worship in some other form or way than according to the Establishment without having their civil rights impaired or their liberties interfered with. Now, Quebec received its law from the King, subject to the terms granted in the capitulation. There was no statute of Elizabeth in force and that statute was not carried to any one of the colonies. I might quote the view of Lord Mansfield, whose authority is unquestioned both in judicial decisions and in a letter addressed to Mr. Grenville, the Prime Minister, in 1764, in which he says that the penal laws of the United Kingdom are never carried to a colony as part of the common law they take with them. If that is so in a colony settled by

the people of England, it is much more so in the case of a colony that is secured by conquest. Such a law cannot operate, as the hon. the Minister of Justice pointed out last evening, unless it would be by the abrogation of all those rights that were ceded by capitulation and contained in the Treaty of 1763. Now, we have in the Act 14 George III, chapter 83, this provision:

"For the more perfect security and ease of the minds of the inhabitants of the said Province, it is hereby declared, that His Majesty's subjects professing the religion of the Church of Rome, of and in the said Province of Quebec, may have, hold, and enjoy the free exercise of the religion of the Church of Rome, subject to the King's supremacy, declared and established by an Act made in the first year of the reign of Queen Elizabeth, over all the dominions and countries which then did, or thereafter should belong to the Imperial Crown of this realm; and that the clergy of the said church may hold, receive and enjoy their accustomed dues and rights with respect to such persons only as shall profess the said religion."

The whole Act of Elizabeth is not introduced by this, but only those provisions, I think sections 7 and 8, which relate solely to the question of the Sovereign supremacy, and that supremacy is not affected, as Lord Selborne points out, by an appeal to the Pope as the spiritual head of the Roman Catholic Church, who, in deciding questions relating to the church over which he has jurisdiction not incompatible with the civil law, acts as a moral arbitrator. Of course, the position of the Roman Catholic Church in the Province of Quebec is not altogether that of a voluntary association; it has certain connections with the State. It is not true that we have an entire separation between Church and State in all the Provinces of this Dominion. The Roman Catholic Church in the Province of Quebec occupies a somewhat anomalous position. Under the Quebec Act and ever since, that church has been allowed to collect tithes from its members, but not from members of other religious persuasions. The collection of those tithes, for the purposes mentioned, imposes on the church certain obligations. For instance, a case has been decided in the Quebec courts in which a resident of a parish who had paid his church rates, insisted on the curé, with whom he had some difference, baptising his child, and the curé refused; and a judgment was given enforcing the rights of the parishioner as against his ecclesiastical superior. And so with regard to other matters, in so far as the church enjoys certain special advantages, the civil authorities have a right to see that the corresponding obligations are properly enforced whenever the question is raised. It was on this ground that judgment was given for the burying of Guibord within the ground usually

regarded as consecrated. In discussing this question the court said:

"Nor do their Lordships think it necessary to pronounce any opinion upon the difficult questions which were raised in the argument before them touching the precise *status* at the present time of the Roman Catholic Church in Canada. It has, on the one hand, undoubtedly, since the cession, wanted some of the characteristics of an established church; whilst, on the other hand, it differs materially in several important particulars from such voluntary religious societies as the Anglican Church in the Colonies or the Roman Catholic Church in England. The payment of *dimes* to the clergy of the Roman Catholic Church by its lay members, and the ratability of the latter to the maintenance of parochial cemeteries, are secured by law and statutes. These rights of the church must beget corresponding obligations, and it is obvious that this state of things may give rise to questions between the laity and the clergy which can only be determined by the municipal courts. It seems, however, to their Lordships to be unnecessary to pursue this question, because, even if this church were to be regarded merely as a private and voluntary religious society, resting only upon a concensical basis, Courts of Justice are still bound, when due complaint is made that a member of the society has been injured as to his rights, in any matter of a mixed spiritual and temporal character, to enquire into the laws or rules of the tribunal or authority which has inflicted the alleged injury.—207-208. Their Lordships conceive that if the Act be questioned in a Court of Justice, that Court has a right to enquire, and is bound to enquire, whether that Act was in accordance with the law and rules of discipline of the Roman Catholic Church which obtain in Lower Canada, and whether the sentence, if any, by which it is sought to be justified was regularly pronounced by any authority competent to pronounce it."

And so far, on account of its special rights, making it to a limited extent a State Church, it has imposed upon it certain obligations, and so far these may be brought before the ordinary civil tribunals for the purpose of their enforcement. But, beyond this, there is no connection; beyond this, it is purely a voluntary association, and it has the same right of appeal to the Pope as the spiritual head of the church that any other church would have to appeal to the constituted authority of that church. It is not a national, it is a Catholic Church, that is, its authority extends, regardless of political boundaries, over all those who profess its faith. Now, to deny that right, so far as Lord Selborne lays it down—and that is as far as it is asserted in this particular case—would be to say to those of the Roman Catholic persuasion: Although you may have your notions of church polity, which are not the same as ours, yet you are not at liberty to assert them; because you believe that a church may have boundaries wider than those of other churches, you are to be limited by political considerations to the limits of a particular state. I say that would be an intolerable rule. If the Presbyterian Church of Canada to-day chose to connect itself with that of the United States, I do not know

any law that would prevent it establishing its ecclesiastical courts to which both bodies would be subject; and, in so far as the civil tribunal might be called on to adjudicate on questions relating to those courts, those questions might be disposed of in so far as they might be connected with the material affairs of either country. Now, let me call the attention of the hon. member for North Simcoe to this. The Government of England has legislated upon this subject. At the time of the American Revolution there was no Episcopal bishop in the colonies now the United States. After the revolution, the Episcopal churches of the independent colonies required spiritual heads; they required bishops in the Episcopal churches of the United States. How were they to get them? They were separated from England, and the English Parliament had no longer any jurisdiction over them. The result was that, after a good deal of hesitation, Parliament legislated, and passed the Act 26 George III, chapter 24, authorising the Archbishop of Canterbury to ordain bishops for the Episcopal churches within the Independent Republic of the United States. There was Parliament itself, on account of the connection between Church and State, undertaking to exercise what might be regarded as a legislative and spiritual jurisdiction in a foreign country; and they hesitated so long, if I recollect rightly, that the Scotch bishops ordained the first bishops before the Act of Parliament came into operation. The United States never took any offence, so far as I know, at that Act, and never claimed that it was a usurpation of supremacy or an interference with their sovereignty. The Archbishop of Canterbury, in this respect, did everything that the Pope has done throughout Christendom in the ordination of bishops in the Roman Catholic Church. Now let me take another case. There was the appointment of a bishop at Jerusalem, for Syria and the countries of the east, by the English Church. Parliament authorised that appointment. It was the exercise, according to the hon. gentleman's view, of sovereign authority within the dominion of the Sultan of Turkey; and the only ground of embarrassment with them was whether the Greek Church, as well as the Church of England, being part of the general Catholic Church, would be offended and think that the English Church were interfering with their jurisdiction; and so the Archbishop of Canterbury addressed a letter to the Bishop of Jerusalem, warning him that he was to cultivate a spirit of Christian charity and of good understanding with the authorities of the Greek Church in that particular section of the country.

But to set up the doctrine laid down by the hon. gentleman here, based on the Act of the Queen's supremacy, would be to deny to all churches having a particular form of church polity, the privilege of extending their views of Christianity over the habitable world. I would like to know, according to his view, how it would be possible to obey the Divine command to go into all the world and preach the gospel to every creature. The hon. gentleman would arrest every minister of the Gospel under that theory, who would undertake to preach beyond the limits of the country to which he belonged. I dare say some hon. gentleman will remember when the Methodist Episcopal body in this country formed a part of the Methodist body of the United States, when they had no bishop in Canada, when their conference was held in the State of New York——

Sir JOHN A. MACDONALD. I remember that well.

Mr. MILLS (Bothwell)—when their ministers were sent to the Province of Ontario, and when, on account of the sympathies of those ministers with liberal views and their opposition to the connection between Church and State, they were charged with being American emissaries in this country. But I never knew any one who pretended to say it was an act of sedition on their part to come into this country for the purpose of preaching the Gospel. If there had been a State Church in the United States, and had they been sent here by the President, the hon. gentleman might, perhaps, argue as he has on this question, but where are the estates of the church? Where are the possessions of the Pope that give him anything like temporal dominion? His authority rests solely upon the implicit acceptance of his teaching and his views by those who profess to be members of the society of which he is the head, and to say that he shall not ordain a minister or send him to this country, to say that the Roman Catholics in this country may not make him their arbitrator to decide questions of difference, to decide how property, which the only party competent to decide says rightly belongs to them, shall be distributed, would be to place Roman Catholics, not on a footing of equality, but on a footing of inferiority to those who are members of other churches. The hon. gentleman argued, from opinions expressed by a writer in the *Quarterly*, that the views entertained by the Jesuit Order were such as they are represented to be. Now, I do not know what their views may be, I do not care. I am not a keeper of their consciences and so I do not interest myself in them; but I deny altogether

that this Parliament has a right to constitute itself an ecclesiastical tribunal or council for the purpose of seeing whether their views are right or wrong. We may decide for ourselves in our individual capacities, but we are not endowed with any power of that sort, and I do not think any Protestant would care to be judged by any such rule. I was interested, in looking over the speeches made many years ago in the House of Commons (England), when it was said that certain members of the Church of England were adopting Armenian views, and one speaker, Mr. Rouse, declared that these persons were emissaries of the Church of Rome. He said:

"I desire it may be considered how the See of Rome doth eat into our religion, and fret into the very banks and walls of it, the laws and statutes of this realm. I desire we may consider the increase of Armenianism, an error that makes the grace of God lackey after the will of man. I desire that we may look into the belly and bowels of this Trojan horse, to see if there be no men in it ready to open the gates to Romish tyranny, for an Armenian is the spawn of a papist, and if the warmth of favor come upon him, you shall see him turn into one of those frogs, that rose out of the bottomless pit; these men having kindled a fire in our neighbor country are now endeavoring to set this kingdom in a flame."

Now, we know that a large portion of the Protestant community in this country are Armenians; and if we are to judge by the public meetings and the discussions which have taken place on this question, they are as far from Roman Catholicism as any other section of the community. Anyone who remembers something of the history of Holland, will remember how Grotius, because he was an Armenian, was carried out of the country in a cask; and how John Barnaveldt was carried into another world on a scaffold because he was an Armenian, and for the very reasons given by Mr. Rouse that the doctrines they were teaching would necessarily lead to the restoration of Roman Catholicism. There is nothing, in my judgment, more mischievous than to undertake to pass judgment upon the religious opinions of any portion of the community in a popular assembly and make those opinions the pretext for withholding rights and imposing disabilities. We have, irrespective of religious opinion in this House, occasionally given aid to Mission Schools. We have aided the Presbyterian Mission Schools, the Methodist Mission Schools, the English Church Mission Schools, the Roman Catholic Mission Schools, and I have never heard anyone say that because we did so, as a matter of expediency for the present, and because it was better to establish these schools among the Indians, for the time being, than public schools, that

this Government was connected with a church or in favor of any particular church on that account. I am not the least afraid that, if we have an open field and fair play, Protestantism is likely to suffer in this country, in consequence of the aggressions, or attributed aggressions of the Roman Catholic Church. I have no doubt whatever, that in a fair field Protestantism will be able to hold its own, and it will succeed just in proportion as it is actuated by the spirit of toleration and fairness, which will serve rather to draw men towards it and secure a favorable consideration for those religious views that it seeks to enunciate, rather than the spirit of intolerance which will repel men from it. How can we secure a fair hearing for our dogmas from our Roman Catholic friends if we do that which they think is unfair to them, and if we undertake to deny to them privileges that we maintain for ourselves? I am not disposed to confer upon any Roman Catholic institution in this country privileges that I would withhold from any Protestant institution of a similar character. I believe that the more clearly the line of separation is drawn between Church and State, the better it will be for all classes in this country, but I admit that I am unable to interfere or to assist in drawing that line in any Province except in the Province of which I am a member. I have the right to exercise my privileges as an elector, and if the policy that has been carried out is one that I think detrimental to the public interest I may, in that capacity, oppose it; but I have no right, from my place in this House, to undertake to do for the people of another Province what I can only do legitimately in my own Province, as an elector of that Province. And so, the more clearly we have impressed upon our minds the fact that each Province must take care of itself, that it must entirely separate the Church from the State for itself, that with that we have nothing to do, that, except by usurpation, we cannot interfere, the sooner we can have clearly impressed upon our minds this line of action, and the more steadily we adhere to it the better it will be for all parties concerned. The early founders of our Christian religion were men in rather poor circumstances, and occupying very humble social positions. Their influence, at the beginning, was with the humbler classes, with Jewish hucksters and with slaves of the Roman Empire. They gradually, in the course of three centuries, worked their way up through every grade of society until the Emperor himself became a convert to the Christian system. At first they had the best organised Government the world has ever seen, hostile to them. If they were able, by

their industry, their zeal, their self-denial and their devotion to what they believed to be the cause of religious truth, to overcome such obstacles and conquer such difficulties, there is no danger that Protestantism in this country, if its ministers are true to the profession of their faith—and remember that they are to know nothing else except Christ, and him crucified—if they are true to their faith and their high calling, and preach the Gospel instead of politics, I am perfectly satisfied that Protestantism will have nothing to fear. I am as ready as any member of this House to resist encroachment. Why should it be otherwise? If I, as many others here are doing at this moment, take a position which many of our friends may not concur in, because they have been misinformed, if I would not be disposed to do wrong to serve the interests of my own friends, and those with whom I sympathise, why should I endanger my political position to promote the religion of a portion of the community which I believe to be, in many respects, erroneous? Let those answer who accuse us of pandering to the Roman Catholics. I do not pretend to judge for them. I judge for myself. I accord to them the same freedom I claim for myself, and I would rather, a hundred-fold, be the victim of the wrongful judgment of others, than myself become the instrument of wrong to any portion of my fellow-countrymen.

A. SENECAL, Superintendent of Printing.